

-----Original Message-----

From: KAREN PENAFIEL [mailto:kpenafie@BOMA.ORG]

Sent: Friday, July 23, 1999 11:35 AM

To: CURRENTS@LISTSERV.BOMA.ORG

Subject: Potomac Currents - Special Forced Access Edition and Survey

POTOMAC CURRENTS

Biweekly Newsletter of the Government Affairs Division  
Building Owners And Managers Association International

July 23, 1999

SPECIAL FORCED ACCESS EDITION - WE NEED YOUR ASSISTANCE

Dear BOMA Member:

As we have been reporting in Potomac Currents, policy changes under consideration by Congress, the Federal Communications Commission (FCC) and several states could result in "forced access" to BOMA members' buildings for the benefit of any and all telecommunications service providers. What is euphemistically called "nondiscriminatory access" by some could easily cost the real estate industry billions of dollars annually in both lost revenues as well as additional safety, security and liability expenses.

Our challenge is to establish a record based on facts, and not the rhetoric being espoused by some in the telecommunications industry. We cannot establish that record, however, without your help.

Please take a moment to complete the attached brief, confidential questionnaire. You may also copy and forward the questionnaire to your colleagues and encourage them to complete one for their building. All responses shall be kept in the strictest confidence. Their only use will be to present a factual case to policymakers on real estate's behalf.

For statistical validity, it is important that the questionnaire be completed by the person within your organization responsible for negotiating leases with telecommunications companies. If you are not that individual, please forward this survey to that person.

Because we need to file our Comments with the FCC by August 13, the

deadline for your response is Friday, July 30. Please return your questionnaire by fax to Gerry Lederer at BOMA (202) 371 -0181. It may also be downloaded from the BOMA Homepage after Monday, July 26, 1999.

#### ADDITIONAL HELP/DATA

We are also seeking examples of unreasonable conduct by CLECs as they have demanded access or have refused to provide service to a building, or under-performed once they were in your building. If you have a story that you believe will help our effort, please e-mail us at [glederer@boma.org](mailto:glederer@boma.org). Also, if you have a site management company administering the telecommunications spaces in your building, make sure they are involved in this process and send their names to us.

CAVEAT: Some on the other side have tried to turn this into a tenants' rights issue. Please make sure that you are communicating with your tenants on this issue, and explain your need to maintain control for their safety and security. Having your building "wired for success" is a great idea, so long as you retain control over who and how folks access your property.

#### DEFINITIONS

For purposes of achieving consistency in responses on the attached survey, please be guided by the following definitions.

COMPETITIVE TELECOMMUNICATIONS PROVIDER: A provider of local telecommunications services, including voice or data services. This does not include the incumbent local exchange carrier, which is usually the "Bell system" provider, or a cable operator or other entity that offers only video programming.

ACCESS: Physical entry into your building, including entry onto your rooftop and into your vaults, equipment closets, risers, conduit and other space within a building, or the right to use wiring that you own inside a building.

ROOFTOP TENANT: Any entity (individual, corporation, partnership, etc.) that leases and occupies rooftop space.

SERVICES: Provision of local telecommunications services, such as voice or data.

EXCLUSIVE CONTRACT: A contract that states that a particular competitive telecommunications provider will be the sole provider of services for a building or portfolio of buildings.

\* \* \*

#### TELECOMMUNICATIONS ACCESS SURVEY

ALL RESPONSES WILL BE KEPT CONFIDENTIAL

1. What is your company's or office's primary business function?

☐ Ownership ☐ Management ☐ Both

2. Are you the person responsible for negotiating contracts with telecommunication service providers for your building or organization?

☐ Yes ☐ No

3. What percentage of your buildings fall into each of the following:

\_\_\_\_ Office      \_\_\_\_ Mixed      \_\_\_\_ Residential      \_\_\_\_ Retail  
\_\_\_\_ Corporate facility      \_\_\_\_ Industrial      \_\_\_\_ Other

4. How many buildings do you own or manage? \_\_\_\_\_

5. What is the total square footage of your building(s)?

\_\_\_\_ < 100K      \_\_\_\_ 300K - 600K      \_\_\_\_ 1- 5 million  
\_\_\_\_ 100K - 300K      \_\_\_\_ 600K - 1 million      \_\_\_\_ > 5 million

6. Where is (are) your building(s) generally located?

\_\_\_\_ Northeast      \_\_\_\_ South      \_\_\_\_ Midwest      \_\_\_\_ West      \_\_\_\_  
National

7.a If you are a multiple building owner or manager, what percent are:

\_\_\_\_ Class A      \_\_\_\_ Class B      \_\_\_\_ Class C      \_\_\_\_ N/A

7.b If you are a single- building owner or manager, is your building:

\_\_\_\_ Class A      \_\_\_\_ Class B      \_\_\_\_ Class C      \_\_\_\_ N/A

8. Which competitive telecommunications providers have contacted you in the past year to request access to your building(s)?

Co. #1 \_\_\_\_\_  
Co. #2 \_\_\_\_\_  
Co. #3 \_\_\_\_\_  
Co. #4 \_\_\_\_\_

9. Of those who contacted you, to whom did you provide access or are in current contract negotiations?

10. Of those who contacted you, what percent requested exclusive contracts?

11. Single-building owner/managers: answer 11&12, then skip to 15. For each company in Question 7, please provide the # of buildings, % of portfolio, and % of tenants the competitive telecommunications provider proposed to serve.

	# of buildings	% of portfolio	% of tenants
Co. #1			
Co. #2			
Co. #3			
Co. #4			

12. For each company, what percent of those buildings were:

Co. #1	<u>      </u> Urban	<u>      </u> Suburban	<u>      </u> Rural
Co. #2	<u>      </u> Urban	<u>      </u> Suburban	<u>      </u> Rural
Co. #3	<u>      </u> Urban	<u>      </u> Suburban	<u>      </u> Rural
Co. #4	<u>      </u> Urban	<u>      </u> Suburban	<u>      </u> Rural

13. For each company, what percent of those buildings were:

Co. #1	<u>      </u> Class A	<u>      </u> Class B	<u>      </u> Class C
Co. #2	<u>      </u> Class A	<u>      </u> Class B	<u>      </u> Class C
Co. #3	<u>      </u> Class A	<u>      </u> Class B	<u>      </u> Class C
Co. #4	<u>      </u> Class A	<u>      </u> Class B	<u>      </u> Class C

14. For each company, what percentages of those buildings were:

Co. #1	<u>      </u> Office	<u>      </u> Mixed	<u>      </u> Residential	<u>      </u> Retail
	<u>      </u> Corporate facility		<u>      </u> Industrial	
<u>      </u> Other				
Co. #2	<u>      </u> Office	<u>      </u> Mixed	<u>      </u> Residential	<u>      </u> Retail
	<u>      </u> Corporate facility		<u>      </u> Industrial	
<u>      </u> Other				
Co. #3	<u>      </u> Office	<u>      </u> Mixed	<u>      </u> Residential	<u>      </u> Retail
	<u>      </u> Corporate facility		<u>      </u> Industrial	
<u>      </u> Other				
Co. #4	<u>      </u> Office	<u>      </u> Mixed	<u>      </u> Residential	<u>      </u> Retail
	<u>      </u> Corporate facility		<u>      </u> Industrial	<u>      </u>
<u>      </u> Other				

15. Has your building or organization ever denied a competitive telecommunications provider access?

       Yes             No             Don't know  
If so, why?

16. Have competitive telecommunications providers failed to meet contractual or tenant service obligations?

       Yes             No             Don't know  
If so, how?

17. Have you ever contacted a competitive telecommunications provider to request service for your building or organization, and been denied?

       Yes             No             Don't know  
If so, why?

18. How long would you say it usually takes to negotiate an agreement with a competitive telecommunications provider?

       1-3 mos             3-6 mos             7-11 mos             Over 1 yr  
       Don't know

19. What is the longest it has ever taken to negotiate an agreement with a competitive telecommunications provider?

\_\_\_\_\_ 1-3 mos \_\_\_\_\_ 3-6 mos \_\_\_\_\_ 7-11 mos \_\_\_\_\_ Over 1 yr  
\_\_\_\_\_ Don't know

20. Why did that particular negotiation take the length of time it did?

21. How long does it usually take to negotiate leases with traditional tenants?

\_\_\_\_\_ 1-3 mos \_\_\_\_\_ 3-6 mos \_\_\_\_\_ 7-11 mos \_\_\_\_\_ Over 1 yr  
\_\_\_\_\_ Don't know

22. How long does it usually take to negotiate leases with rooftop tenants that are NOT competitive telecommunications providers?

\_\_\_\_\_ 1-3 mos \_\_\_\_\_ 3-6 mos \_\_\_\_\_ 7-11 mos \_\_\_\_\_ Over 1 yr  
\_\_\_\_\_ Don't know

23. How many service providers currently serve your tenants, or use your building(s) as a platform from which to serve others, for:

Internet \_\_\_\_\_ Cable \_\_\_\_\_ Cellular \_\_\_\_\_ Paging \_\_\_\_\_ PCS \_\_\_\_\_  
\_\_\_\_\_ Broadcaster

\_\_\_\_\_ Satellite \_\_\_\_\_ Local Phone \_\_\_\_\_ Long Distance \_\_\_\_\_  
Tenant-owned equipment

\_\_\_\_\_ Other: [\_\_\_\_\_]

24. What was your motivation or reason for offering these services to your tenants?

25. What costs or inconveniences, if any, are associated with installing a new competitive telecommunications provider using:

a. wireless technology?

b. wired technology?

OPTIONAL NAME:  
OPTIONAL PHONE:

PLEASE RETURN BY E-MAIL (GLEDERER@BOMA.ORG) OR FAX (202-371-0181) TO GERRY LEDERER, BOMA INTERNATIONAL, BY JULY 30. THANK YOU!

\* \* \*

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## **EXHIBIT 4**

-----Original Message-----

From: KAREN PENAFIEL [mailto:kpenafie@BOMA.ORG]  
Sent: Thursday, September 09, 1999 12:14 PM  
To: CURRENTS@LISTSERV.BOMA.ORG  
Subject: Potomac Currents, Issue 16

POTOMAC CURRENTS

Biweekly Newsletter of the Government Affairs Division  
Building Owners and Managers Association International

Volume 9, Issue 16  
September 13, 1999

OPENING ARGUMENTS

On August 27, BOMA and the other members of the real estate coalition (Real Access Alliance) submitted comments to the FCC on the issue of forced access. The filing is the first exhaustive documentation of why mandatory access is unnecessary, unmanageable and unconstitutional. The filing includes:

- \* An economics analysis by Strategic Policy Research;
- \* A BOMA member survey on market conditions and access granted conducted by a third party polling firm;
- \* A tutorial for the FCC (and others) on the laws of rights of way and easements; and
- \* An updated constitutional analysis by the Chief Justice's former lead clerk.



All of these documents may be downloaded from the BOMA Homepage at  
<http://www.boma.org/download/govt/fcc/comments.htm>.

BOMA plans to package all these materials in an easy to read and understand booklet. We will then distribute the booklet to the various state PUCs as well as to the Canadian equivalent of the FCC, the CRTC. We will also make additional copies available to local BOMAs for use in the various state legislatures.

COMMENT: We thank all of you, especially BOMA's Association Executives, for your efforts in making this filing such a success. Also, thank you for creating the Industry Defense Fund which ensures that BOMA never needs to walk away from a battle for lack of funds.

#### BROWNFIELDS FOREVER?

The Clinton Administration once again reiterated its opposition to a stand alone brownfields bill during the August recess by outlining its disagreements with the most prominent legislation in this area, HR 1300, the brownfields remediation bill. Introduced by Rep. Sherwood Boehlert (R-NY), the chairman of the Water Resources and the Environment subcommittee, the bill has broad bipartisan support with its 120 cosponsors, split evenly between Republicans and Democrats, and the House Committee on Transportation and Infrastructure has already favorably reported out the bill by a vote of 69 to 2.

However, the Administration in recent weeks has stepped up its public relations effort to defeat the bill. Through officials at the Environmental Protection Agency, the Administration has offered the viewpoint that it would undermine the health and welfare of communities and would merely add to the current morass of cleanup related lawsuits.

COMMENT: In light of opposition from multiple fronts to comprehensive Superfund reform, BOMA International will continue to work with several other real estate partners to help pass brownfields legislation. Our goal is to secure more realistic provisions for the treatment of slightly contaminated properties, to include enactment of exemptions for innocent purchasers of polluted parcels of land.

#### BUGPROOFING

Accelerating progress is being made by property owners and managers to safeguard buildings from the millennium bug, according to a second industry survey conducted by BOMA International, in partnership with the U.S. General Services Administration (GSA), the White House Council on the Year 2000 Conversion, and Buildings magazine.

This follow-up survey - updating a nearly identical query carried out earlier in the year - affirms that a very small percentage of building systems (1-5%) is affected by the Y2K problem.

Notably, property professionals are farther along in every type of action to remedy the Y2K bug. Examples:

- \* 86% of companies report being 75 to 100% complete in identifying affected systems - an increase of 20% since the initial survey.
- \* 90% of respondents are at least 50% complete in implementing system corrections - a rise of 25%. 84% of companies have completed at least half their testing of repaired or upgraded systems - an increase of 29%.

\* 79% of respondents are 50% or more complete in developing and implementing contingency plans - a jump of 41%.

The systems identified as the three leading priorities for action have not changed. They are telecommunications, security, and energy management.

In response to a newly added question, over three-quarters of companies also note they have informed their tenants of steps being taken to address the Year 2000 problem.

COMMENT: The commercial real estate industry is continuing to take aggressive action to ensure that buildings will be ready. This second round of survey results should help reassure the public that workplaces will be open for business as usual that first week of the new millennium.

#### GET IT TOGETHER!

Recent events threaten the long-term goal of having a single set of model codes to govern the built environment. Last fall, efforts to produce a single fire code failed when the National Fire Protection Association (NFPA) and the International Code Council (ICC) refused to complete their discussions. Now it appears there will be competition between NFPA and the ICC on all built environment codes. On August 31, NFPA and the International Association of Plumbing and Mechanical Officials (IAPMO) announced that their organizations signed a memorandum of understanding to "collaborate on a compatible set of consensus codes and standards for health and safety in the built environment."

While the hard work of all three organizations to consolidate and coordinate their codes is to be applauded, their efforts do not go far enough. Industry needs a single set of model codes, and NFPA, IAPMO and ICC must take the next step and agree to meet to put an end to their stalemate. We recognize that this will be no easy task. That is why BOMA, in conjunction with a dozen other national organizations -- including the US General Services Administration -- formed the "Get It Together" coalition to urge the ICC, NFPA and IAPMO to reinvigorate their code coordination efforts.

BOMA and many of the other members of "Get It Together" have also expressed their deep disappointment that NFPA and IAPMO have set a course to create a competing set of codes, without including the International Code Council in the process. We are equally disappointed that the ICC has taken what we believe to be unwarranted and aggressive legal actions that have stymied progress.

The "Get It Together" coalition is now on the offensive to stop this destructive conflict. We sent a letter to both Michael Perrone, Chairman of ICC and Herman Brice, Chairman of NFPA (at the time, IAPMO and NFPA had not yet joined forces), expressing the coalition's hope that both groups would recognize the diverse benefits that would result from a single set of codes. Furthermore, we recommended that the groups agree to some form of mediation as a logical means of resolving their differences. The coalition stands ready to identify a qualified and objective mediator and is willing to facilitate any meetings designed to resume progress. We are disappointed to report that as of penning this column, neither the ICC nor NFPA have provided any response to our offer.

COMMENT: It is in the interest of consistency in code enforcement, economies in code application, our nation's economic competitiveness in the global marketplace, and ultimately, the public's health and safety that we say "get it together." Until a single set of codes is in place nationwide, BOMA and its allies in the "Get It Together" coalition will continue to work educating state and local governments on the value of a single set of

coordinated model codes and encourage them to adoption. We hope you agree and will join us in our effort. Attached are the addresses and phone numbers for the associations' leaders and a sample letter. Why not write or call and tell them to "Get It Together!"

#### ENERGY MANAGERS ONLY!

On Friday, September 17, 1999, the Energy Planning Network (EPN), a national membership-based federation of energy managers, will host a conference on "Energy Consumers Report - What's Working and What's Not."

Conference registration is open to facility/energy managers only, to provide a smaller, more intimate setting to discuss personal experiences with the quickly evolving energy industry. The conference will take place at the Boston Marriott Copley Place, Boston, MA. Registration is only \$85. No walk-ins are permitted. For more information on the meeting, please call 978-264-0654.

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#### ACTION ALERT!

Please take the time to call or write today to the leaders of the NFPA, ICC, and IAPMO to express your interest in a single set of building codes. A sample letter follows. Please send a blind carbon copy to Marco Giamberardino at [mgiamber@boma.org](mailto:mgiamber@boma.org) or fax to (202) 371-0181. Thanks for your time and effort!

Chief Herman Brice  
Chairman  
National Fire Protection Association  
1 Batterymarch Park  
PO Box 9101  
Quincy, MA 02269-9101  
(617) 770-3000

Mr. Michael A. Perrone, C.B.O.  
Chairman  
International Code Council  
5203 Leesburg Pike - #708  
Falls Church, VA 22041  
(610) 696-1773

G.P. Russ Chaney  
Executive Director  
International Association of Plumbing and Mechanical Officials  
20001 East Walnut Drive South  
Walnut, CA 91789-2825  
(909) 595-8449

Commercial property professionals have long anticipated the development of a single set of codes. We strongly believe this single set of model codes will lead to increased consistency in the content, interpretation, and enforcement of building regulations at the state and local level.

However, we are concerned that the ICC, NFPA and IAPMO are working independently to develop competing codes that, if adopted, would undermine the goal of national uniformity in building regulations. [Name of your Company] urges you to recognize the diverse benefits that would result from a single set of codes and ask that the ICC, NFPA and IAPMO work cooperatively to resolve your differences and establish a coordinated, successful and lasting code development effort.

Sincerely,

Your name and title

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## **CERTIFICATE OF SERVICE**

I, Crystal Rogers-Starkey, do hereby certify that on this 27th day of September 1999, copies of the foregoing Reply Comments of Winstar Communications, Inc. were delivered by hand, unless otherwise indicated, to the following parties:

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